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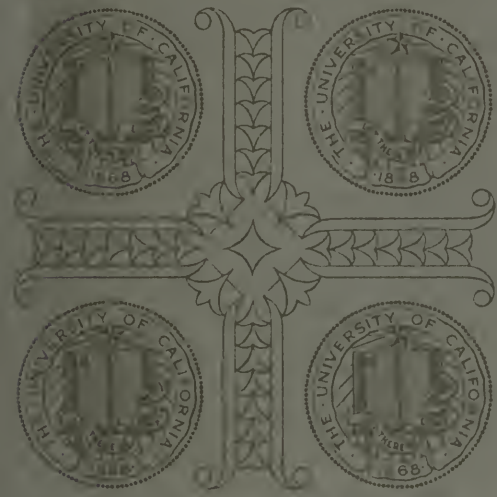


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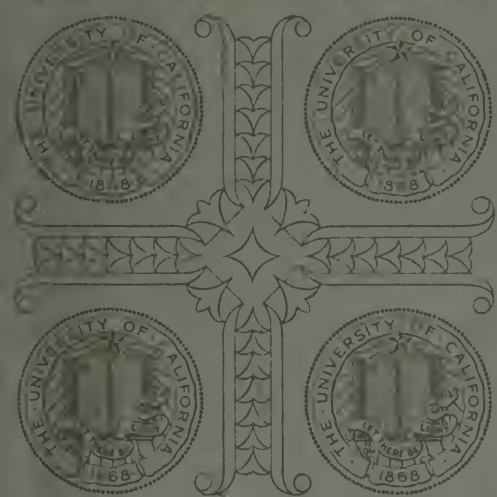
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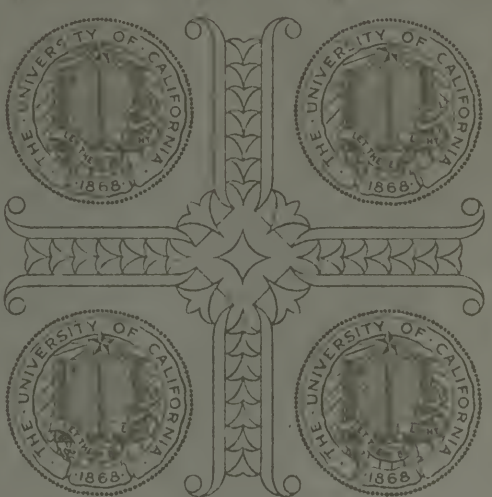
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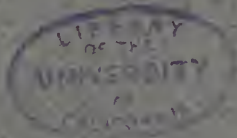
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THE ORIGIN OF AMERICAN STATE
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BY

ELMER ELLSWORTH BROWN

Under the Roman Empire, education was made an affair of the state. But during the middle ages, the church came to be regarded as the chief, if not the only, educator. Men forgot that the civil power had ever exercised this function, and doubted whether it ever would or could. This view was somewhat shaken by the religious disturbances which preceded the founding of the American colonies, but its continued ascendancy is variously shown in our colonial systems of education. Yet we find in those systems a larger admixture of civil agency than was common in European countries at the same period. The isolation of the colonies, their poverty and feebleness, and doubtless many other circumstances, contributed to this result. But even here we find nothing like that governmental control of education which has been so characteristic of the nineteenth century.

It is the purpose of this paper to trace the earlier development of state control of the higher education in this country. We must not forget that this development is part of a more comprehensive movement, which has affected all of the great culture-lands of the world. Yet the American side of the movement is sufficiently distinct to admit of separate study, and in this study the more general characteristics of the movement may be largely left out of account.

The ends to be sought in the external management and control of an institution of learning are, briefly, these: First, to provide such instruction as shall meet the need of the public to which the given institution ministers; and secondly, so to husband or to enlarge its resources that it may serve that public efficiently and continuously. We are to see how these ends were sought in the administration of our early colleges.

But first a word as to the type of educational administration with which the colonists had been familiar in the mother country. The form of organization common in England was that in which the master and fellows of the school or college were made a body politic, having full control of the institution, as to both financial and educational administration. This was a dangerous system, for it gave the teaching body the management of the funds out of which they themselves were paid. To meet this danger, some person or persons outside of the institution, the bishop of the diocese it might be, or some other dignitary of the church, was commonly charged with the duty of official visitation. The right of visitation, by common law, rests with the founder and those designated by him as his successors. Hence the importance in disputed cases of determining the real founder of the institution in question. The visitatorial relation of some higher power was the only provision under this system to prevent the misapplication of endowments and secure the rights of the public in the institution. That it was often an insufficient safeguard is shown by the painful and tedious efforts of Parliament in the nineteenth century to correct long-standing abuses in the management of the endowed schools of England. In fact, the general history of the control of English educational institutions is not by any means so simple a matter as this brief statement might seem to imply. But the ins and outs of that history need not concern us here.

The peculiar conditions found in the colonies called for variation from the English type at the outset. But it was not clear what direction this variation should take. We shall find, accordingly, fluctuation and experiment, resulting in mixed and complicated systems of control. Out of this confusion, we shall see the simple type of organization known as the close corpora-

tion rising into prominence. This type was dominant for some years previous to the American Revolution, and for two or three generations thereafter. It was framed in accordance with models found in the industrial world and in the world of commerce, and it provided for effective business management. But it did not provide equally well for the responsibility of educational institutions to the public which they served. The public became dissatisfied with institutions of this sort, and after a good deal of bungling experimentation, began the establishment of universities under unmixed state control. Such, in brief, is the movement which we are about to examine.

The oldest of our colleges was founded on a liberal grant of funds by the General Court of Massachusetts Bay Colony in 1636. This was soon followed by the bequest of John Harvard, whose name the institution has borne almost from its beginning. Until 1642, the college seems to have been subject to the direct action of the General Court or of a committee constituted by the General Court. Then a permanent Board of Overseers was charged with its management, this Board being composed of both civil and ecclesiastical dignitaries, all acting *ex officio*. The Overseers were to have "full power and authority" in all matters relating to the management of the college, but were made to "stand accountable thereof" to the General Court. Finally, in 1650, a body politic was erected, commonly known as the Corporation, to hold the property and administer the affairs of the college. This Corporation was made to consist of "A President, five Fellows, and a Treasurer or Bursar."*

The wording of the charter shows the influence of English precedents. "Fellows" would seem, according to the English usage, to mean members of the corps of instruction. Following this interpretation, two of the resident fellows of the college, in 1722, presented a petition to the General Court, "praying that they may be vested with the powers of the Charter, as members of the Corporation." The Corporation presented a memorial in

* The charters of our colonial colleges, and interesting records of their administrative history, are reproduced in CLEWS. *Educational legislation and administration.*

opposition to this petition, in which they declared "*that the resident Tutors should never be able to make a major part [of the Corporation]*, because we think it contrary to the light of nature, that any should have an overruling voice in making those laws, by which themselves must be governed in their office-work, and for which they receive salaries." This question was hotly debated for many months, but with the result that the petition was finally denied. A like question came up a century later, in 1824, but it was again decided adversely to the resident fellows. It was clear by this time that the English system did not find favor in America.

The charter was amended in 1657, to enlarge the powers of the Corporation. But it was expressly provided, "that the Corporation shall be responsible unto . . . the Overseers." This is the form of government which Harvard College has been under from the middle of the seventeenth century down to the present time. It has seen many vicissitudes, but the relation of the several parts of the system one to another has not been materially altered. The core of the organization is a self-perpetuating corporation, made up mainly, since the earlier period, of persons having no pecuniary interest in the institution. The other and larger managing body stands to this Corporation virtually in the relation of a board of visitors.

In the troublous times in the latter half of the seventeenth century, four different attempts were made to alter the college charter, but all of them failed. Among the chief points in dispute in all of these movements was the question as to the constitution, or even the existence, of the Board of Overseers. This point is emphasized, because it is vital to our inquiry. The question as to the Board of Overseers was simply one form of the question, Where shall the visitatorial power be lodged? And that, again, is in effect the question, How shall the rights of the public in this institution of learning be secured?

Meanwhile, the colonial government of Massachusetts was contributing regularly to the support of the college. In one instance, at least, a lottery was authorized for the benefit of the college; but in the main, the colony, and later the province, extended its aid in the form of direct appropriations from the

public treasury. It cannot be said that Harvard College was in those days what we understand by the term "state university;" but up to 1650 it was as nearly like a state university as the colony was like a modern state. In a less degree, it preserved this character after the erection of the Corporation. According to the journal of the House of Representatives, "The House entered into the consideration of proper grants to civil officers," and under this heading voted the appropriate payments to the justices of the superior court, the president of the college, the secretary of the province, and a long list of other public officers, including certain additional officers of the college. In 1737, a stipend was voted for the year to President Holyoke, in these terms: "In as much as the College derived their Constitution from the General Court of the late Colony of the Massachusetts Bay and the Assembly of this Province have from time to time cheerfully granted considerable sums of money for the erecting of sundry buildings for the more commodious reception of the Fellows, Tutors, Graduates, and Students there, and have also lately built a convenient dwelling-house for, and furthermore have at all times readily afforded their aid and assistance in supporting of, the President as the matter required, and all this in expectation of, and dependence upon their close adherence to their Constitution, and so answering the great and good designs of founding said College, . . . it is ordered, That there be and is hereby granted unto the Reverend Mr. Edward Holyoke to be paid out of the publick Treasury, the sum of *two hundred pounds* . . . for the space of one year from the time of his instalment," etc.

[The college was strongly ecclesiastical in its bent and purpose. This was a matter of course, rather than a matter of specific enactment. It was seriously proposed, in 1699, to introduce certain religious tests, but the attempt was not successful.]

So we find the first of our colonial colleges organized under a rather complicated system of control, one chief purpose of which was to keep the institution responsible to the public and responsive to the educational needs of that public. And this relation of the college to the colony was jealously guarded, so that it became very intimate and fruitful.

[The second of our colonial colleges, that of William and Mary, in Virginia, received a charter from the King and Queen in 1693.] This charter provided for a system of control as complicated as that of Harvard College. It named a board of trustees, who were to take the preliminary steps in the establishment of the institution, including the appointment of the corps of instructors. This board of trustees was to choose a Chancellor every seven years, and the Bishop of London was named in the charter as the first Chancellor. The trustees were also to choose annually a Rector from their own number, and the Reverend James Blair, the Bishop of London's commissary in the colonies, was named in the charter as the first Rector. Moreover, the trustees were authorized to appoint from time to time the President and professors of the college, and the charter designated the Reverend James Blair as first President, with a life tenure of his office. The President and masters or professors of the College of William and Mary, in Virginia, were made a corporation authorized to hold and manage all property belonging to the institution. The control of the property by the board of trustees was accordingly made temporary, that body being directed to turn everything over to the President and professors as soon as the college should be fairly established. Thereafter the board of trustees should continue as a self-perpetuating body, charged with the duty of filling vacancies in the corps of instruction, the making of laws for the government of the college, and the regular "visitation" of the institution. They were designated as "Visitors and Governors."

Of the eighteen persons constituting the first Board of Visitors and Governors, four were chosen from the clergy, and fourteen from the members of the colonial government. The ecclesiastical purpose of this institution was strongly accented in its charter; and in practice the presidency of the college and the office of commissary of the Bishop of London were regularly united in the same person down to the time of the Revolution. The charter conferred on the institution a land endowment and important portions of the public revenues. Other revenues were from time to time granted to the college by the General Assembly.

[Yale College, the third of our colonial institutions of higher instruction, was established as a "collegiate school," by vote of the General Court of Connecticut, in 1701. The legislature proceeded very cautiously in this matter, because of doubt as to its authority to create a corporation.] What it did was virtually to create a corporation without calling it by that name, and without conferring the right to use a common seal. The body thus called into existence was described as the "trustees, partners or undertakers for the said school." It was a self-perpetuating body of ten—or not more than eleven—"ministers of the gospel inhabiting within this colony and above the age of forty years." It was given full power to appoint a "rector, master and officers," and to manage and control the affairs of the collegiate school. By later acts this body was given the right to use a common seal, the rector was made *ex officio* a member of the board, and the age limit of members was reduced to thirty years. Finally, in 1745, the legislature grew sufficiently bold to grant the college a regular charter, erecting a corporation to be known as "The President and Fellows of Yale College in New Haven." This was made a self-perpetuating body, without limitation as to the persons who might be appointed to fill vacancies in its membership. It was given absolute control over the financial and educational administration of the institution; was empowered to appoint and to remove tutors, professors, and other officers; and to make "laws, rules and ordinances, not repugnant to the laws of England, nor the laws of this colony," for the regulation of instruction and government in the college.

The adoption of this form of administration for the college in Connecticut is an event of the greatest importance in the history of our higher education. For Yale became a "Mother of colleges;" and we find the remarkably simple and flexible Yale type of organization dominating both the higher and the secondary education of the United States for two or three generations after the achievement of our national independence. It is clear, too, that the founders did not happen on this arrangement by any sort of chance, though they may not have seen all that there was in it. This appears from correspondence with certain Bostonians who were interested in their undertaking.

Some of the Connecticut men were particularly desirous of making the new college a perennial fountain of orthodoxy. In this they had the heartiest sympathy of the faction in Massachusetts who were in active opposition to the "latitudinarian" tendencies already present and influential in Harvard College. There is extant a memorandum, supposed to have been drawn up by Cotton Mather, proposing that a university be erected in Connecticut by a synod called for that purpose, and that it be in fact and in administration a true school of the churches. In a letter written September 15, 1701, Increase Mather expressed the fear that the political changes then imminent would result in taking away the government of the college from those interested in its establishment.

Judge Sewall and Secretary Addington, of Massachusetts, were requested to suggest the form of an act for the establishment of the new institution. In their letter, accompanying the draft of such an act, they declare that they have delayed making recommendations because of "not knowing what to do for fear of overdoing. And that is the reason there is no mention made of any visitation, which is exceedingly proper and beneficial; all humane societies standing in need of a check upon them."* So it is evident that the relation of both church and state to educational administration had been considered; and that, the dangers of both civil and ecclesiastical control were deliberately guarded against by setting up an organization as far as possible independent of both church and state, risking by preference those other dangers which might arise from the non-visitable character of the institution. There was shown, in all this, a largeness and liberality of purpose, looking beyond the narrower horizon of those consulted for advice, which must command the highest respect of the student of our educational history.

We see, too, the significance of that legendary scene in which ten ministers are said to have come together and to have made a formal donation of books for the founding of a college in Connecticut. It was no empty tableau, but was instead the formal act by which the donors constituted themselves the founders of the college. We shall see that this simple act was construed as

* WOOLSEY. *Historical discourse, August 14, 1850.* Appendix IV

having an important bearing on the destinies of the institution at a critical period of its history.*

[Previous to the granting of the charter of 1745, the colonial legislature had made grants from time to time for the support of the institution, and such grants were made annually thereafter up to and including the year 1754. Lotteries and collections were also authorized by the legislature for the benefit of the college.]

Forty-five years elapsed between the founding of this, the third of our American colleges, and the incorporation of its next successor. This interim was a time of great significance in the life of the colonies. The first impetus given to the higher interests of the New World by colonists who had left the mother country under the stress of war and persecution, was already spent. The colonies were coming to live more in themselves, and less in an intimate intercourse with the Old World. They were becoming more and more provincial, as well as somewhat more American. Their education was still bound up more closely than we can readily imagine, with their religious life. Within this period, changes were coming over that religious life, which proved to be of great significance. Two of these should be particularly mentioned.

The Society for the Propagation of the Gospel in Foreign Parts was organized in England in 1701. It was an organization of the Established Church, and was formed for the especial purpose of extending the operations of that church in the American colonies. It sent clergymen to many colonial parishes and aided in the support of their ministrations. It lent assistance also in

*It is impossible, however, to say how much of this is real history; or how much of foresight may have been read into the acts of the founders by President Clap, in his desire to make the early history of the college consistent with his view that the legislature possessed no power of visitation in that institution. See DEXTER. *The founding of Yale College*, in Papers of the New Haven Colony Historical Society, vol. III. In the same volume may be found a closely related article: BALDWIN. *The ecclesiastical constitution of Yale College*.

Before the establishment of Yale College, the attempt seems to have been made, under the influence of Increase Mather, in 1692, to set the corporation of Harvard College free from all manner of visitation; but the act of the provincial assembly, reincorporating the college in accordance with this plan, was disallowed by the crown, as we have seen. Cf. CLEWS, *op. cit.*, p. 33.

✧ the establishment of schools and colleges. Under its leading, the Church of England became an aggressive and powerful agency in the religious and educational development of the colonies.

Another movement of tremendous force and volume, which was felt less by the Episcopalians than by those of other communions, was that known as "The Great Awakening." This was a religious revival, which, under the lead of such different men as Jonathan Edwards and George Whitefield, swept over the colonies from New Hampshire to Georgia in the second quarter of the eighteenth century. It was a mighty upheaval, which left its mark on American education and theology and ecclesiastical organization, and even on American politics, for long years after its subsidence. It drew communities and provinces, remote from one another, into close and vital sympathy. (At the same time it caused new division and discord everywhere. By intensifying sectarian differences, it contributed to the breaking down of all state establishment of religion in this country. In New England, it set the "New Lights" over against the "Old Lights," profoundly disturbing both Harvard and Yale Colleges. It virtually started the split which finally separated the Unitarians from their brethren in the Congregational churches. In the middle states it divided the Presbyterian Church into two opposing camps. One of the chief points of difference here had to do with the question of the training of ministers for the Presbyterian churches; and out of this controversy arose the College of New Jersey.

The first charter of this college, commonly known as Princeton College, now Princeton University, was granted in 1746; but this document has long been lost and only a general summary of its contents is known to be in existence. The second charter, which with but slight alterations is still in force, was granted in the name of the king by the royal governor of New Jersey in 1748. This instrument shows the influence of the Yale administrative system. It provided that the governor of the province should be, *ex officio*, a member and president of the board of trustees. With this exception, the board was made a self-perpetuating body. It was to consist of twenty-three members, including the

governor, and also the president of the college, and to be known as "The Trustees of the College of New Jersey." It is said that Governor Belcher, who granted the second charter, earnestly sought to have several members of the colonial government included, *ex officio*, in the membership of the board. On the other hand, one of the prominent members of the board, as named by the charter, strenuously opposed the *ex officio* membership, even of the governor. Of the twenty-three members of the first board, four were members of the colonial Council. But these were individual, and not *ex officio*, appointments. Twelve of the twenty-three were ministers, and the rest laymen. All but three of the members were Presbyterians. Three were residents of New York and three of Pennsylvania. It was provided that a majority of the board must always be residents of New Jersey; but no provision was made for rendering the predominance of clerical members in the board permanent. And it was expressly provided that all religious denominations should be on an equality as regards the privileges of the college.

[The only governmental aid which the college received during the colonial period was in the form of an authorization by the legislature, in 1762, "to raise by a lottery, a sum of money for the use of said college."]

Five other colleges arose within the colonial period. A brief summary of the charter provisions for their administration will help us to understand the movement toward public control which set in after the Revolution.

The "Proprietors and Governors in Chief" of the Province of Pennsylvania, in 1753, granted through their lieutenant governor a charter to "The Trustees of the Academy and Charitable School in the Province of Pennsylvania." This institution had been erected through the efforts of Benjamin Franklin and other public spirited citizens of Philadelphia whom he had interested in the enterprise. The charter was a concisely worded document, making the board of trustees a self-perpetuating body of twenty-four members, with the single limitation that those members must always be fit persons residing in the province of Pennsylvania and within five miles of the seat of

the academy. This body was given full control over the affairs of the institution.

Two years later, a confirmatory charter was issued by the same authority, which enlarged the powers of this corporation, and changed its designation to "The Trustees of the College, Academy, and Charitable School of Philadelphia, in the Province of Pennsylvania." The Reverend William Smith, M.A., was named in this charter as the first provost of the college, and the Reverend Francis Allison, M.A., as the first vice-provost, the latter to be also rector of the academy. But it was expressly provided that they should hold their respective offices only during the pleasure of the trustees. We shall see in a later portion of this paper how the college so incorporated grew into the present University of Pennsylvania.

Ecclesiastical purposes and influences had less to do with the establishment of this institution than in the making of our other colonial colleges. The attempt was made to secure in it the continued coöperation of several denominations. The college received public aid in money, during the colonial period, from the city of Philadelphia, and from the king and the proprietaries of the province. It also received a gift of about 2500 acres of land from one of the proprietaries. The king, by an order in council, authorized a collection throughout the kingdom for the benefit of the institution. The colonial legislature seems to have extended aid only by way of authorizing lotteries for its benefit.

The legislature of New York began, in 1746, the authorization of a series of lotteries to raise money for the establishment of a college in that colony. In 1751 an act was passed vesting the moneys which had been raised in this way, and any others which might be received for the same purpose, in a board of trustees. Two years later, £500 a year of the excise revenue was set apart for this purpose. The trustees who had been charged with the administration of this fund petitioned the governor of the colony for a charter for the proposed college. The governor accordingly issued a charter, in the name of the king, bearing date of October 31, 1754. The college was then known as King's, but after the Revolution as Columbia. The granting of this charter was the



occasion of one of the hottest disputes known in the history of the colony. We shall have occasion later to consider the opposing views which thus came into prominence. For the present, it is enough to note the most significant provisions of the charter itself.

The corporation which it constituted was entitled "The Governors of the College of the Province of New York, in the City of New York, in America." This board was made to consist of seventeen or more civil and ecclesiastical functionaries, holding their membership in the board *ex officio*; and twenty-four appointed members, all vacancies in this last-named number being filled by vote of the remaining members. Samuel Johnson, Doctor of Divinity, was named as the first president, to hold his office during good behavior. It was provided that the president "shall forever hereafter be a member of, and in communion with the Church of England." He was included among the members *ex officio* of the board of governors. There were six other ecclesiastical members, *ex officio*, namely, the Archbishop of Canterbury, the rector of Trinity Church in New York, and the ministers of four nonconformist congregations in that city. The First Lord Commissioner for Trade and Plantations led the list of civil dignitaries entitled to a place on this board, and a number of colonial and municipal officials followed.

This body was given absolute control of the affairs of the college, it being expressly provided that no other person or persons should exercise any power of visitation in the institution. The use of the liturgy of the Church of England was made obligatory, but it was provided that no person of any religious denomination should be excluded from an equal share in the liberties and benefits of the institution "on account of his particular tenets in matters of religion." A supplemental charter was issued in 1755, providing for the appointment in the college of a professor of divinity of the Reformed Dutch Church.

After a fierce fight, the legislature of the colony, in 1756, divided the money which had been raised by lotteries for the benefit of the college into two equal parts, one of which was turned over to the governors of the college for the use of that institution, while the remainder was devoted to other public

purposes. The college received the excise moneys which had been voted for its use in 1753, but seems to have had no other assistance from the public treasury of the colony. This college was included in the king's order in council providing for a contribution for the College of Philadelphia, and the contribution of the king himself was twice as large as that which he made for the other institution.

The institution now known as Brown University was incorporated by the general assembly of Rhode Island in 1764, as the "Trustees and Fellows of the College or University, in the English Colony of Rhode Island and Providence Plantations, in New England, in America." This corporation was divided into two branches, the trustees and the fellows. The fellowship was declared to be "a learned faculty." It was given full control of the instruction and immediate government of the college, and of the granting of academic degrees. It was also authorized to nominate tutors and other subordinate officers, and to make laws and regulations for the ordering of instruction and government in the college, subject always to the approval of the trustees. The "joint concurrence of the trustees and fellows," was made necessary to the validity of all other acts of the corporation. There were to be thirty-six trustees, of whom twenty-two must always be Baptists, and the remaining fourteen be distributed, in specified proportions, among the Quakers, Congregationalists, and Episcopalians. The fellows were to be twelve in number, including the president; and that officer and seven others of the number must be Baptists, the rest being chosen indifferently from any or all denominations. (Absolute freedom of religion within the institution was guaranteed.) Certain exemptions from taxation were granted in the charter, but otherwise the institution seems to have received no assistance from the general assembly within the colonial period.

The college now known as Rutgers was established under the name of Queen's College by a charter issued in 1766. This charter has been lost and no copy of it seems to have been preserved. A new charter was issued by the royal governor of New Jersey,

in the name of the king, in 1770. This charter incorporated the "Trustees of Queen's College, in New Jersey." This board of forty-one members was made a self-perpetuating body, except that four of the chief civil officers of the colony were made members *ex officio*. Not more than one-third of the trustees might be ministers of the gospel. The governor or one of the other members *ex officio* was to preside, if present, at meetings of the board. The president must be a member of the Dutch Reformed Church.

It would not be easy to find anything more romantic in the history of American education than were the beginnings of Dartmouth College. For our present purpose, we must not stop for any account of Eleazar Wheelock's school for Indians in Connecticut, nor of the mission of the Indian preacher, Samson Occum, to England, nor of the steps which led up to the final transplanting of this Connecticut school into the wilds of western New Hampshire, where it was transformed into a college for red men and white men together.

The charter on which the college was established was issued by the governor of New Hampshire in the name of King George the Third, in the year 1769. It erected a corporation to be known as "The Trustees of Dartmouth College," twelve in number. The governor of New Hampshire was made, *ex officio*, a trustee. With this exception, the board was made a self-perpetuating body. Eight of the number must be "resident and respectable freeholders" of New Hampshire, and seven must be laymen. Dr. Wheelock was made a trustee and president of the college with power to appoint his successor, by will. The successor so appointed by him should be president of the college until "disapproved" by the trustees. This is, so far as I know, the only instance of an hereditary presidency in the history of American education, and it turned out much as our present knowledge of the American disposition would lead us to expect.

It was provided further that no person of any religious denomination whatsoever should be excluded from participation in the liberties and advantages of the college on account of his "speculative sentiments in religion." The college received considerable aid from the province of New Hampshire, before the Revolution,

in the form of grants of public lands, and in 1773 a direct subsidy of £500 for the erection of a new building.

Such, in brief, is the administrative history of our colonial colleges. There were nine of them—one for each of the muses, as Professor Hinsdale used to say. Nearly all of them, perhaps the whole nine, were established primarily for a religious purpose—to train up a body of learned and godly ministers; though as a secondary consideration they were expected to serve other ends. President Thomas Clap, in a pamphlet published in 1754, declared that “Colleges are *Societies of Ministers*, for training up Persons for the Work of the *Ministry*,” and he added, speaking of Yale College, “The great design of founding this School, was, to Educate Ministers in our *own Way*.”

But as the Revolutionary period drew on, the position of such strongly ecclesiastical institutions as these became less secure. The population of the colonies was becoming more and more diversified as regards religious associations. No single province continued to be homogeneous in its profession of faith, whatever it may have been at the outset. This growing diversity of religious belief has been one chief cause for the movement in modern societies toward a separation of church and state. Such connection as there had been between church and state in most of the colonies, was accordingly weakened. The Society for the Propagation of the Gospel was unifying the forces of the Church of England, but was at the same time raising up a determined and bitter opposition on the part of those who feared the establishment of the Episcopacy. The dissension produced in many communities and in more than one communion by the “Great Awakening,” continued to breed strife and heresies. Under such circumstances, a college could not be at the same time the accepted representative of both church and state; and those who were solicitous for the interests of the colleges looked with favor on a simple and compact form of college control which would make it possible for those institutions to keep steadily on their course, in a manner consistent with their most cherished traditions, and undisturbed by the warring of factions in the commonwealth. The close corporation met

this need, along with many others, and it became the standard type of college organization.*

At the same time there was growing up a widespread distrust of the colleges as then conducted. This took many forms, and was shared by men of the most diverse political and religious convictions. But it all came back virtually to this: That no one of the colleges fully answered the public need as regards higher education. Every one of them was the college of a faction, or a section, or a sect, within the commonwealth, and failed therefore to be a college of the commonwealth in its entirety. The democratic spirit, which had been rising, very slowly, since the beginning of the eighteenth century, and the interest in civic affairs, which increased rapidly as the Revolution drew on, both tended to accentuate this feeling of distrust. It was much more pronounced in the case of some colleges than in that of others, but none of them seems to have escaped it entirely.

As this feeling rose to self-consciousness, there appeared two ways in which it might find adequate expression; two ways in which colleges might be made to answer the common need in this matter of higher education: First, the commonwealth might, through the agencies of government, assume and exercise the right of visitation in the existing institutions, or even if need be, compel those institutions to submit to changes in their charters which should render them more serviceable to society in its organic wholeness and unity; or secondly, it might ignore the existing colleges, regarding their case as hopeless, and proceed to erect new institutions, so organized and administered as to meet the highest demands of public responsibility. The legal status of educational corporations was not then so well defined as now; and the constitution of the United States, with its provision safeguarding the obligation of contracts, was not yet in existence. So it is not strange that the first of these two courses seemed much more practicable than the other. We shall see that it was

*It is hardly necessary to call attention to the fact that the close corporation is a form of organization much older than Yale College. Among American precedents may be cited the act for the establishment of the King William School at Annapolis in 1696 (*cf.* CLEWS. *Op. cit.*, pp. 415-422); and the provision for self-perpetuating vestries in the parishes of Virginia, contained in the code of 1662 (BANCROFT. *History of the United States*, vol. I, p. 447, in the edition of 1892).

first tried, in a very thorough manner, and not till it had signally failed did the movement for the establishment of state universities acquire any sort of headway. The question of public control is to be kept separate from that of public support. Yet the two are intimately connected. Institutions of learning have more than once been led to accept the larger responsibility, through the difficulty of maintenance as representatives of a party or faction.

Even before the Revolution, the two possible courses of procedure had both been distinctly considered; and attempts had been made to carry both into execution, but with no sort of success in either case. We will consider briefly these colonial efforts. They help us to understand the case as it appeared when the newly liberated states began to deal with this problem.

We have seen that Governor Belcher endeavored to secure several *ex officio* memberships in the board of trustees of Princeton College, for members of the colonial government—a thing which Governor Franklin accomplished later in the case of Queen's College. Such provisions must be regarded, however, as of more formal than practical importance. Of greater significance, was the claim of King William to the right of visitation of Harvard College through the royal governor—a claim which wrecked the new charters proposed for that institution in 1692 and 1697; and perhaps, also, that of the year 1700. The two proposals last named provided for visitation by the governor and council, but this provision was not accepted. Even before this time, the General Court of the colony had attempted, in 1672, to force a new charter upon the college without the consent of the Corporation, but this charter seems never to have been recognized as valid. Just seventy years later, in 1742, an aggrieved tutor, who was unable to get any satisfaction from either the Corporation or the Overseers, appealed to the General Court, and also published a pamphlet in which he undertook to show that the power of visitation resided in the legislature. He was unsuccessful in his appeal, but it is not clear that the question which he raised was definitely decided.

But the most notable attempt in colonial times to subject an educational close corporation to direct governmental control,

occurred in Connecticut. In the middle of the eighteenth century, Yale College was under the leadership of President Clap, a man of marked ability, but personally unpopular. The conflict between the "New Lights" and the "Old Lights" was then raging in Connecticut. Yale College was a stronghold of the earlier orthodoxy, though it gradually drew nearer to the New Light party. It seems, under President Clap's leadership, to have gained to a large extent the ill-will of both sides in this controversy. Partly in consequence of this hostility, the annual donations to the college from the colonial treasury were discontinued after 1754. It is said that from 1758 to 1763, "four distinct appeals were made to the legislature, through the fellows, the graduates and the students of the College," to inquire into and rectify abuses in the management of the institution. One act of the college authorities was represented as being, "an infringement on the order and rights of the regular churches, . . . and a daring affront to legislative power."* Finally the trouble culminated in a formidable memorial, presented to the legislature in 1763.

In this it was declared that the general assembly was the founder of the college, inasmuch as it had granted the original charter, in 1701; and in that charter had bestowed a grant of about sixty pounds sterling, besides making subsequent donations in money and lands. The present general assembly, it was asserted, possessed the right of visitation under the common law, as successor to the founder; and there was need that this right be exercised in the then present emergency, to preserve the good order of the college in several respects, and particularly as regards orthodoxy in religion.

President Clap himself undertook the reply to this memorial. He declared that the legislature had the same authority over the college as over other persons and estates in the colony, but that it did not possess the right of visitation, because the act of incorporation and the gift of public funds which accompanied it did not found the institution. It had existed in fact before it possessed a charter, and donations of books, money, and land had already been made to it. The founders were those ministers who had made a large and formal donation of books for its establishment.

*CLEWS. *Op. cit.*, p. 159.

This fact was recognized in the act of 1701, which looked upon the institution as already founded, and merely gave the trustees legal authorization to proceed with the erection of the school. Besides, the preamble of the charter of 1745 expressly said that the first trustees had founded the school. It was shown that it would be detrimental to the orderly management of the college if some body of visitors other than the trustees were set up, to whom any aggrieved person might appeal from a decision of the ordinary college authorities. And as regards orthodoxy, it was urged that the president and fellows had taken better precautions than might be expected continuously from any other body of visitors which the legislature might constitute.*

This reply was backed up with ample citations from the most eminent legal authorities. It is evident that it commanded the respect of thoughtful men in the colony, as it has of competent jurists of later times. It put an end to the efforts to secure legislative interference in the affairs of the college. And it may be added that substantially the same ground as that taken by President Clap, was taken by the Supreme Court of the United States in the Dartmouth College case, half a century later.

The other possible way to public control, that of founding new institutions directly responsible to the government, was clearly formulated before the colonies became independent, and a strong effort was made to have this plan put on its trial. It happened in connection with the founding of King's College, in New York. The funds first secured for the establishment of this institution were raised, as has been said, under the authority of the colonial legislature. When the time came to begin the actual organization of the college, it was proposed that it be established by royal charter. The corporation of Trinity Church offered to bestow on the institution a tract of land, attaching certain ecclesiastical conditions to the gift. It was proposed that this gift be accepted, and the conditions be embodied in the charter. The plan aroused violent opposition, which was led by William Livingston.

*The text of this argument has, I believe, never been printed. I have followed President Clap's own summary of it as given in his *Annals or history of Yale-College*.

This gentleman was a prominent member of the well-known New York family of that name, the proprietors of the Livingston Manor. He had been educated at Yale College. It is said that, a few years previous to the time we are considering, there were in the whole province of New York only ten persons, not in holy orders, who had received a collegiate education; and four of these were the brothers Livingston. William Livingston was an able lawyer, a moderate Presbyterian, an uncompromising patriot. Like many American Presbyterians of his time, he was strenuously opposed to any union of church and state. He became one of the most vigorous opponents of the movement for the establishment of an American episcopate. His aristocratic antecedents did not prevent him from developing at an early period a strongly democratic spirit. He removed to New Jersey, and when that colony became a state, he was elected its first governor under the new order of things. By repeated election, he was continued in this office up to the time of his death, in 1790.

I have spoken thus particularly of Governor Livingston for the reason that the earliest distinct, American utterance in favor of state control of the higher education which I have been able to find, appears in some of his writings. At the time when the first steps were taken toward securing a royal charter for King's College, Mr. Livingston was editing *The Independent Reflector* in the city of New York. This was a four-page folio, devoted to the discussion of various questions of public interest. It served as a sort of periodical pamphlet, such as the eighteenth century abounded in. The greater part of the weekly issue of this sheet seems to have been written by Livingston himself, though some articles were undoubtedly contributed by various members of his coterie. The paper continued for only fifty-two numbers, in 1752-53. It treated of many topics, but is especially noteworthy because of what it had to say on the subject of the new college.

The topic was first taken up in the seventeenth number of the paper. "The true use of education," says the writer, "is to qualify men for the different employments of life to which it may please God to call them. 'Tis to improve their hearts and understandings, to infuse a public spirit and love of their Country; to inspire them with the principles of honor and

probity; with a fervent zeal for liberty, and a diffusive benevolence for mankind; and in a word, to make them more extensively serviceable to the Commonwealth."

He insists that the kind of education that is given will inevitably affect the common weal: that no sort of higher education can possibly be a merely private concern. This is one of the most striking features of his argument. "The consequences of a liberal education," he says, "will soon be visible throughout the whole Province. They will appear on the bench, at the bar, in the pulpit, and in the senate, and unavoidably affect our civil and religious principles." Again and again, in later issues, he comes back to this central thought, and hammers it in with all his might.

In the eighteenth number he proceeds, "to offer a few arguments, . . . to evince the necessity and importance of constituting *our* college upon a basis the most catholic, generous and free." "The extensive influence of such a seminary," he says, "I have already shown in my last paper. And have we not reason to fear the worst effects of it, where none but the principles of one persuasion are taught, and all others depressed and discountenanced?" Such an institution he calls a "party-college." A college erected in the interest of any party is a menace to public interests, and most of all a college erected in the interest of any ecclesiastical body. "A party-college, in less than half a century, will put a new face upon the religion, and in consequence thereof affect the politics of the country. . . . Whatever others may in their lethargy and supineness think of the project of a party-college, I am convinced that under the management of any particular persuasion, it will necessarily prove destructive to the civil and religious rights of the people." Such an institution the college of the colony would inevitably be, if established by charter, as was proposed.

In the nineteenth number he continues the discussion of the dangers attendant upon the incorporation of the college by royal charter. In the twentieth, he proposes his alternative for this procedure. "I would first establish it as a trust," says Mr. Livingston, "that societies have an indisputable right to direct the education of their youthful members." This sounds

strangely like an utterance of La Chalotais in the *Essai d'éducation nationale*, ten years later than this. But the idea was already abroad in France; and it is possible that Mr. Livingston, who read French, may have been familiar with the advanced French thought of the time upon this subject. He continues, "If . . . it belongs to any to inspect the education of youth, it is the proper business of the public, with whose happiness their future conduct in life is inseparably connected, and by whose laws their relative actions will be governed. . . . Let it [the college] not be made the portion of a party, or private set of men, but let it merit the protection of the public." Those who ask to be given direction of the higher education of the commonwealth, he adds, "ask no less considerable a boon, than absolute universal dominion."

"Instead of a charter," he goes on to say, "I would propose, that the college be founded and incorporated by act of Assembly, and that not only because it ought to be under the inspection of the civil authority; but also, because such a constitution will be more permanent, better endowed, less liable to abuse, and more capable of answering its true end." Again, "Should the college be founded by an act of Assembly, the legislature would have it in their power, to inspect the conduct of its governors, to divest those of authority who abused it, and appoint in their stead, friends of the cause of learning, and the general welfare of the province. Against this, no bribes, no solicitations would be effectual: no sect or denomination plead an exemption: but as all parties are subject to their authority, so would they all feel its equal influence in this particular." This confidence in the infallibility of elected legislatures, seems to have been characteristic of the rising democratic sentiment of the time. "We are certain," Mr. Livingston continues, "that an act of Assembly must be unexceptionable to all; since nothing can be inserted in it, but what any one may except against."

The twenty-first number of the *Independent Reflector* is perhaps the most important of all, for in this a complete plan for the organization of a college under public control is offered in outline. In the interest of brevity, I shall quote only portions of six of the eleven sections under which this plan is presented.



It is proposed, "FIRST: That all the trustees be nominated, appointed, and incorporated by the act [of Assembly], and that whenever an avoidance among them shall happen, the same be reported by the Corporation to the next sessions of Assembly, and such vacancy be supplied by legislative act. That they hold their offices only at the good pleasure of the Governor, Council and General Assembly. And that no person of any Protestant denomination be, on account of his religious persuasion, disqualified for sustaining any office in the college."

"SECONDLY: That the President of the college be elected and deprived by a majority of the trustees, and all the inferior officers by a majority of the trustees with the President: and that the election and deprivation of the President be always reported by the trustees, to the next session of Assembly, and be absolutely void, unless the acts of the trustees in this matter, be then confirmed by the legislature.

"By this means the President, who will have the supreme superintendency of the education of our youth, will be kept in a continual and ultimate dependence upon the public; and the wisdom of the province being his only support, he will have a much greater security, in the upright discharge of his duty, than if he depended solely upon the trustees. . . ."

"The FIFTH Article I propose is, that no religious profession in particular be established in the college; . . ."

"To this most important head, I should think proper to subjoin,

"SIXTHLY: That the whole college be every morning and evening convened to attend public prayers, to be performed by the President, or in his absence, by either of the fellows; and that such forms be prescribed and adhered to as all Protestants can freely join in."

"SEVENTHLY: That divinity be no part of the public exercises of the college, I mean that it be not taught as a science; that the corporation be inhibited from electing a divinity professor; and that the degrees to be conferred, be only in the arts, physic, and the civil law."

"EIGHTHLY: That the officers and collegians have an unrestrained access to all books in the library, and that free conver-

sation upon polemical and controverted points in divinity, be not discountenanced; whilst all public disputations upon the various tenets of different professions of Protestants, be absolutely forbidden."

We see that this radical innovator did not go so far in the way of a separation between education and religion, as current practice had gone long before the close of the nineteenth century. His eighteenth century faith in the infallibility of representative governments is matched by his confidence that a ritual might be devised for college purposes which would satisfy all of the warring sects of that time. By way of illustration, he even devoted one number of his paper to a form of prayer which he had devised for this purpose, composed almost wholly of passages from the Bible.

This remarkable series of papers culminated, in the twenty-second number, in an impassioned and declamatory appeal to the colonists to prevent the advocates of the charter college from accomplishing their purpose. By this time a great war of disputation had been stirred up. The taverns, the coffee-houses, and the newspapers, were alive with the subject. As we have seen, the objectors were unsuccessful in the attempt to prevent the issuance of the charter. But after the college had been incorporated, they brought in a bill in the legislature, providing for the establishment of a rival institution, along the lines proposed in the *Independent Reflector*. But little is known of the fortunes of this bill; but the upshot of the whole affair was a compromise, already referred to, under which only half of the money which had been raised by lotteries for a college went to the chartered institution, the remainder being used to build a pest-house and a jail. Mr. Livingston raised his voice in jubilation over this result.

So the two obvious methods of making the higher education a truly public education, had both been seriously proposed before the Revolution, but neither one of the two had as yet been fairly tried. Independence brought with it momentous changes, which were to have great influence in the shaping of our educational systems. There came a great increase of civic pride and of interest

in political affairs.* Democracy was steadily advancing, though still far behind that democracy with which we are familiar. There were men of unusual ability among our political leaders, and they felt the full sense of newness and promise in the situation of the new states. They realized that independence could be maintained here only under a democratic system and that democracy could be maintained only by educated intelligence and integrity. In their schemes of government, accordingly, education held a prominent place; public education, too,—instruction considered as an affair of the state.

It was at this time that the project of a national university came to be seriously considered. Washington, at Cambridge, in 1775, with a part of his little army quartered in the ruinous buildings of Harvard College, had declared his hope and confidence that such a university would some time come into existence. Charles Pinckney and James Madison proposed in the Federal Convention of 1787 that a university section be included in the national constitution. Gouverneur Morris believed that the national government would possess the power to establish such a university even if no such distinct provision were introduced. Dr. Benjamin Rush, about the same time, was endeavoring to arouse public interest in such a project. Washington repeatedly urged his university scheme, and offered substantial encouragement toward its realization. Jefferson, John Adams, James Monroe, and John Quincy Adams, all showed, in various ways, their interest in such an undertaking.

These men desired a national university as a means of disseminating the principles of free government among our people; of preparing men for public service; of bringing together the representatives of different sections, that they might overcome the differences arising out of local prejudice. They thought, too, by this means to further the cultivation of the arts and sciences, with a view to building up a worthy American civilization. Washington, in his message to Congress in January, 1790, urged the public patronage of science and literature, and added these words: "Whether this desirable object will be the best promoted by

* President Woolsey described it as "a time of relaxed morality and of exalted notions of political rights." *An historical discourse*, p. 35.

affording aids to seminaries of learning already established, by the institution of a national university, or by any other expedients, will be well worthy of a place in the deliberations of the legislature." ✓

The new state legislatures caught the spirit of the time. Great plans were considered, plans of education among the rest. As one writer has remarked, "The Legislative tables were covered with novel projects, and the schemes of men little habituated to the unlimited exercise of the law-making power."

When the war was over, the new states found themselves in possession of a great national domain in the new Northwest. Historians have shown what a mighty influence this Territory exercised in awakening the sense of nationality, and how important were its later bearings upon our political development. Its effects upon our educational development were hardly less marked. ✓ Here was a clear field for educational experiment. Congress undertook the furtherance of education by setting apart lands for educational purposes in this domain. While the project of a national university waited, the states were stimulated and encouraged to build up great educational systems. It is not surprising that under these circumstances the Northwest became a favorite field for the building up of early state universities. ✕

We are now concerned, however, with those uncertain and painful efforts, in the states along the Atlantic, to make over the existing colleges into some sort of institution which should answer to the rising educational consciousness of our people. It is not generally understood how many attempts were made in the legislatures of the new-born states to render the old colleges more directly responsible and ministrant to the whole commonwealth. ✓ Nine colleges had been incorporated and had entered upon a course of college instruction within the colonial period. Of these, at least six were more or less directly affected by this movement. First among these, came the college of Philadelphia. ✕

While the Revolution was still in progress, the general assembly of Pennsylvania instituted an inquiry into the affairs of the college. Many personal and local considerations lent animus to this movement, but the grounds of dissatisfaction alleged by ✓

the legislative committee of inquiry were these: A provision of the college charter requiring the trustees to take an oath of allegiance to the king of Great Britain; evidences of hostility to the government and constitution of the State of Pennsylvania, which had been observed, on the part of "divers of the late trustees of the said college;" and "that your committee also have sufficient reason to believe that the fair and original plan of equal privileges to all denominations hath not been fully adhered to." The college charter was accordingly revoked by the legislature in 1779, and the "powers, authorities, and estates" of the institution were vested in a new corporation, the Trustees of the University of the State of Pennsylvania. This new body was composed of three classes of members: Six of the highest officials of the state government *ex officio*; the "senior minister in standing" in each of six religious denominations in the city of Philadelphia; and thirteen citizens individually named in the charter. Vacancies in the last named class were to be filled by vote of the remaining trustees, but their choice might be disallowed by the house of assembly within six months. The new university was thus placed under the virtual control of the people of Pennsylvania as exercised through the organs of the state government, and so much of ecclesiastical participation as the new charter provided for, was distributed among the leading Christian denominations.

Ten years later the older corporation was revived, and for two years the college and the university existed, at least in name, side by side, as rival establishments. Then, in 1791, by agreement of their boards of trustees, the two were merged into one institution, known to this day as the University of Pennsylvania. The board of trustees of this university, twenty-five in number, is a self-perpetuating body, with the single exception that its president is the governor of Pennsylvania *ex officio*.

During the Revolution and within a few years after its close, an effort was made to improve the relations of Yale College to the commonwealth of Connecticut. It was said of President Stiles that he "brought back the college to its historic place, in harmony with the legislature and all classes of people in the state." What was accomplished at this time, however, was not

a return to the former relations, but a notable change in the constitution of the college. The change was only brought about after a long and bitter contest. The governor of the state proposed that a number of civilians be added to the managing board, as a condition to the renewal of public grants. To this the corporation refused to agree. In 1784 the opponents of the college proposed that the legislature either establish a rival college or proceed to alter the charter of Yale, but this proposal came to nothing. Finally it was agreed, in 1792, that eight of the chief officers of the state should be added, *ex officio*, to the college corporation; and the legislature then granted to the college the arrearages of certain state taxes, which amounted to something more than forty thousand dollars. After this no important change was made in the constitution of the board until 1869, when the state relinquished six of the eight places occupied by its representatives. These six places have since been filled by the alumni of five years' standing, while the governor and the lieutenant governor of the state are still members *ex officio*.

King's College, in New York, was greatly in disfavor while the Revolution was in progress, and its Tory president, Dr. Cooper, was obliged to flee for his life. For a time instruction was wholly discontinued. In 1784 a movement began in the state legislature, "for the establishment of seminaries of learning and schools for the education of youth." The friends of the college took this occasion to present to the legislature a petition for the rehabilitation of that institution, with such revision of its charter as would fit it to be the head of the proposed state system of education. This petition represented that parts of the college charter were "inconsistent with that liberality and that civil and religious freedom which our present happy constitution points out." The combined outcome of this legislative movement and this petition from the college was the University of the State of New York.

In the form given to that institution by the legislation of 1784, the board of regents was a most unwieldy body, consisting of six leading state officials and the mayors of New York and Albany, *ex officio*; representatives of the several counties of the

state, appointed by the governor with the approval of the council of appointment; representatives of the several religious bodies of the state, chosen by the clergy of the respective denominations; and representatives of the founders of any colleges or schools admitted to the University. Moreover, the fellows, professors, and tutors of the several colleges were made "regents of the said University, *ex officio*, and capable of voting in every case relative only to the respective college to which they shall belong, excepting in such cases wherein they shall respectively be personally concerned or interested." Nine members were to constitute a quorum of this composite body—a provision which made it easy for Columbia College to control the board, since its large representation in the New York City contingent could be easily assembled at the place of meeting, while the country members could be got together only with extreme difficulty. This board was virtually a board of trustees of Columbia College, but it was also "empowered to found schools and colleges in any part of the state, . . . every such school or college being at all times to be deemed a part of the university."

The fear of undue ecclesiastical influence was apparently set at rest by the provision that professors should not be subjected to any religious test; but the country members of the board and of the legislature distrusted the college and desired to further the interests of the newer academies. Nor was the arrangement as adopted satisfactory to the friends of the college, who could not be sure that the interests of that institution would be steadily and intelligently provided for by a board so constituted. Different schemes of reform were proposed, and the legislation of 1787 was passed as a compromise measure. This provided that no "trustee, president, principal, tutor, fellow, or other officer of any college or academy, [shall] be a regent of the university." The board of regents was to be composed of twenty-one members, two of whom, the governor and lieutenant governor, should be regents *ex officio*, the remaining members being elected by the legislature. Columbia College was given a self-perpetuating board of trustees, of twenty-nine—later twenty-four—members.

The constitution adopted in 1780 for the state of Massachusetts provided for the continuance of Harvard College under

its established form of government, with only such interpretation of the earlier acts as was necessary to adjust them to the new political order. It was expressly provided in this instrument, "that nothing herein shall be construed to prevent the legislature of this commonwealth from making such alterations in the government of the said University, as shall be conducive to its advantage and the interest of the republic of letters, in as full a manner, as might have been done by the legislature of the late province of Massachusetts Bay."

In 1810 the legislature passed an act making a great change in the board of overseers. The board as now constituted was to consist, in addition to the president of the college and certain state officials, *ex officio*, of fifteen ministers chosen from the Congregational churches and fifteen laymen. This act was not to go into effect until it had been approved by both of the college boards. It was so approved, however, and a new board of overseers was constituted accordingly. In 1812 the legislature repealed this act without reference to the approval of the college boards. The boards held that their approval was necessary to the validity of the act. In 1814 the act of 1812 was in its turn set aside by the legislature, and the act of 1810 confirmed with some modification. This act of 1814 distinctly provided that the approval of the college boards should be necessary to its validity; and such approval was in fact promptly secured. The Massachusetts constitutional convention of 1820-21 proposed to declare the Board of Overseers free to elect to membership in their body "ministers of churches of any particular denomination of Christians;" but the proposal was rejected by the people. In 1843, however, this change was brought about. Finally, in 1865, the right of the state government to representation in the board was given up entirely, and the board, with the exception of the president and treasurer of the college, who are members *ex officio*, became representative of the college alumni of five years' standing.

It appears from what has been said, that the last quarter of the eighteenth century was marked in our educational history by repeated efforts to bring the existing colleges under some sort of direct governmental control; and that after the opening of the

nineteenth century an institution so vitally connected with the commonwealth as Harvard College, suffered some slight encroachment from the state legislature. But the most notable case of this sort, the case in which the movement reached its culmination and also its judicial determination, arose in connection with Dartmouth College, in the second decade of the century.

Eleazar Wheelock had named his son, John, as his successor in the presidency of this institution, in accordance with the provisions of the charter. John Wheelock served the college with marked efficiency for many years. After a time, serious differences arose between him and certain members of the board of trustees. These differences seem to have been at the outset theological in their character. They soon involved a large circle of those interested in the college, in New Hampshire and neighboring states, many leading citizens being enlisted as partisans of either the one side or the other. The dispute became a political question, the great parties in the state being arrayed on opposite sides. President Wheelock finally appealed to the legislature for a committee of investigation, charging the trustees with religious intolerance, with violation of the charter in attacks upon the presidential office, and with other breaches of trust. The legislature voted by a large majority to appoint such a committee. The trustees then removed the president and appointed a successor.

The governor of the state, in a message to the legislature, took grounds against the trustees; and the legislature passed an act, June 27, 1816, declaring that "the college of the state may, in the opinion of the legislature, be rendered more extensively useful," and enacting accordingly "that the corporation, heretofore called and known by the name of the Trustees of Dartmouth College, shall ever hereafter be called and known by the name of the Trustees of Dartmouth University." The membership of the board of trustees was increased from twelve to twenty-one, the president being made a member of the board *ex officio*, and the governor and council being authorized to appoint in the first instance the number of trustees necessary to complete the board to the number of twenty-one. A board of overseers was also constituted, of twenty-five members, having power "to inspect and

confirm, or disapprove and negative, such votes and proceedings of the board of trustees as shall relate to the appointment and removal of the president, professors, and other permanent officers of the university, and determine their salaries; to the establishment of colleges and professorships, and the erection of new college buildings," etc. Of this board, the president of the senate and the speaker of the house of representatives of New Hampshire, and the governor and lieutenant-governor of Vermont, were to be members *ex officio*. The governor and council of New Hampshire were authorized to appoint the remaining members of this board and to fill vacancies in the same as they should occur. It was further enacted that "perfect freedom of religious opinion shall be enjoyed by all the officers and students of the University." The board of trustees of the college maintained that the legislature had no power of interference in their affairs, and carried the matter into the courts. The supreme court of the state of New Hampshire decided against the college. The case was then carried into the supreme court of the United States. Daniel Webster was of the counsel for the college, and his argument in this case added greatly to his fame as a constitutional lawyer. The opinion of the court was pronounced in February, 1819, by Chief Justice Marshall. The finding of the New Hampshire court was reversed.

The decision is summarized in the following terms:

"The charter granted by the British crown to the trustees of Dartmouth College, in New Hampshire, in the year 1769, is a contract within the meaning of that clause of the constitution of the United States (Art. 1, s. 10) which declares that no state shall make any law impairing the obligation of contracts. The charter was not dissolved by the Revolution.

"An act of the State of New Hampshire altering the charter without the consent of the corporation in a material respect is an act impairing the obligation of the charter, and is unconstitutional and void.

"Under its charter Dartmouth College was a private and not a public corporation. That a corporation is established for purposes of general charity, or for education generally, does not,

per se, make it a public corporation, liable to the control of the legislature."*

It would be hard to overestimate the significance of this decision. Chancellor Kent said of it that it "did more than any other single act proceeding from the authority of the United States to throw an impregnable barrier around all rights and franchises derived from the grant of government, and to give solidity and inviolability to the literary, charitable, religious, and commercial institutions of our country."

It was perhaps an unmixed advantage to commercial establishments to have it settled once for all that a self-perpetuating, chartered institution is a private and not a public corporation, and so beyond the reach of governmental interference; but when it came to educational establishments, this decision cut both ways. The conviction to which William Livingston had given utterance many years before—that an institution of higher education could not possibly be a private concern as regards its operation and influence—had come abroad and gained general currency. [That an institution which exercised so momentous a public influence should be beyond the reach of public control seemed to many a dangerous state of affairs. The decision in the Dartmouth College case put an end to efforts directed toward governmental regulation of educational close-corporations; but in so doing it turned the full force of this movement into that other possible course of governmental agency, namely, the establishment and maintenance of colleges and universities under full state control.

In the most of the older states, the colleges already founded were able to ward off the danger which threatened them, of rival establishments under the patronage of the state. The loyalty of their graduates, their acquired endowments, and even the bare fact that they were already in the field, gave them a great advantage. But they did not rely upon such advantage alone. Roused by the loss of prestige and support, or responding to a public need which they recognized apart from such reminders, they set themselves about the enlargement of their sphere of usefulness. The Great Awakening had encouraged the establishment of academies,

*The Trustees of Dartmouth College *vs.* Woodward. 4 Wheaton 514.

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which were believed to be of greater use and value to the people at large than were the more exclusive colleges. These academies offered instruction in various scientific and practical branches, and in advanced literary studies in English, which were not then included in the ordinary college course. But by degrees, the colleges followed the lead of the more popular schools in the giving of such instruction, and so drew nearer, themselves, to the people. They ceased to be schools primarily for the training of ministers and became instead general schools of higher learning—colleges, in a word, of the nineteenth century type. >

But the demand for universities under state control was more profound and far-reaching than was commonly supposed. In some of the older states it led to the establishment of successful state institutions, in spite of all the hindrances and unfavorable pre-suppositions which it had to encounter. We have seen that the University of Pennsylvania, and Columbia and Dartmouth Colleges, had each its brief term of service as a real state institution. But other state universities soon began to take permanent shape. The movement was nearly simultaneous in the west and south. But the influence of the south was dominant in the earlier days, and that of the west at a later period.

North Carolina, following Pennsylvania, included in its state constitution of 1776 the provision that, "All useful learning shall be duly encouraged and promoted in one or more universities." In accordance with this provision, the state legislature erected a university in 1789, which began giving instruction in 1795. This institution, however, did not come under direct state control till 1821. South Carolina College, an institution under full state control, was established by legislative act in 1801, and opened in 1805. The long and varied efforts of Thomas Jefferson to secure the establishment of a university under public control in the Old Dominion, were crowned with success in 1819, the year in which the decision in the Dartmouth College case was handed down by the supreme court of the United States. This was an event of capital importance. Repeated efforts had been made to transform William and Mary College into an institution which might fairly serve as the crowning member of a state system of education. But this had been found at last to be impracticable, chiefly

because of the fixed ecclesiastical character of the old foundation, and the establishment of the new, state university followed.

The fact that the University of Virginia held the chief place in a well-thought-out plan of education, which was vitally connected with a democratic scheme of society, and the further fact that it was the cherished project of Thomas Jefferson, compelled the serious attention of the builders of new commonwealths. And the intrinsic character of the new institution was such that its establishment marked an epoch in our educational development.

Important beginnings were making meanwhile in the new states of the Old Northwest. The first constitution of the state of Indiana, adopted in 1816, contained this significant passage: "It shall be the duty of the general assembly, as soon as circumstances will permit, to provide by law for a general system of education, ascending in a regular gradation from township schools to a State university, wherein tuition shall be gratis and equally open to all." In accordance with this provision, Indiana Seminary was established in 1820, which became Indiana College in 1828; and ten years later, that, in turn, became Indiana University.

In 1817, the "Catholepistemiad or University of Michigania" was called into being by the territorial government of Michigan. Out of this whimsical and grandiloquent affair the real University of Michigan ultimately developed. Favorable circumstances affecting its external administration, combined with excellences of internal management and instruction, gave this institution a position of leadership among our state universities during the latter half of the nineteenth century. The new states coming into being through the century, with few exceptions, established such universities. Their erection soon came to be a matter of course in the new western commonwealths, the beginnings sometimes being made before the territorial status had been outgrown. Such a movement cannot but be regarded as of the highest significance. This monograph is not intended to do more than show the early aims and efforts out of which these state universities have come, and not to trace their development after the movement was fairly under way. If the history of what was doing in this direction between 1820 and 1850 should



be adequately set forth, it would undoubtedly prove of great importance because of the light it would throw on the making of our American civilization.

There is no occasion to claim that in the establishment of state universities we have reached the ultimate form of all academic organization in America. But this may fairly be regarded as a very notable stage in the development of true academic freedom. Such freedom is found in its fulness only in an institution which recognizes the full circle of its responsibility. An institution is free only when it serves the public good in the largest possible measure. The ultimate assurance that any institution will devote itself continuously to such service is to be found in the maintenance of public spirit in its members. An institution under a close corporation is a public institution in the highest sense of the word, when its members give themselves continuously, as a matter of principle, to the service of the whole people. And the governmental control of state institutions is, rightly considered, simply a means which has been devised for keeping the public spirit of a teaching body up to its best estate. We may frankly admit that it is not the only means to this end, but it can not be denied that it has been one of the most effective. In the long run, universities are controlled by public opinion, which they themselves have helped to make. The best form of organization for any given institution is that which best enables it to coöperate vitally and continuously with the best public opinion of its constituency. Universities under close corporations and state universities must be tried alike by this test.

The fact that institutions of these two types have been growing up side by side, in friendly coöperation and equally friendly competition, has lent peculiar interest and distinction to the movement of public education in these United States. The older type is particularly well adapted to the maintenance of worthy academic traditions. It is commonly believed that it is not so readily responsive as the state university to new conditions, which give rise to new educational needs. But it must be added that when the need of change is recognized, it is capable of making radical reforms swiftly and securely.

Institutions under state control, on the other hand, are sensitive to the changing needs of changing times. But when they feel the need of change, they must often wait till public opinion has come round to some sort of understanding of the best direction to be given to the desired reform. And the time of waiting may be a time of uncertain experimentation, which is unfavorable to academic stability. This is especially true when an institution of this sort is so organized that its management changes whenever a new party comes into political power. If a college forever bound to one sect or class is a "party-college," a college which changes with each change of political parties is also a party-college, of a very unfortunate sort. But a state university is not necessarily such an institution. The greater number of the state universities now in existence are, in fact, something very different from a party-college and something vastly better.

It must not be forgotten that both the advantages and the disadvantages of state university control are essentially the same as those of democracy in general. One who has unqualified faith in democracy will think twice before condemning the state university system. An aspect of the case which should not be overlooked, is the education which the people themselves have gained through their very efforts to give the best possible direction to the affairs of a state university.

It appears that, on the whole, some middle ground is desirable for any sort of university—a middle ground which insures both stability and the most ample responsibility. As a matter of fact, both types of American institution have been tending toward such middle ground. The two types are still clearly distinct, and we may hope that they will always be distinct; but each is aiming to avail itself of advantages possessed by the other.

As regards the institutions under the control of private corporations, perhaps the most notable change that has been made, is that which provides for the election of at least a part of the members of their managing boards by vote of their own alumni. This is equivalent to saying that any man may become an elector in this commonwealth of learning by simply gaining such knowledge of the character and needs of the institution as may

be gained by passing through its course of instruction. Harvard, Yale, and Cornell Universities offer familiar examples of this provision.

State universities, on the other hand, are becoming more stable, in consequence of provisions which protect them against abrupt and immediate changes with each change of the party in control of the state government. The Universities of Michigan and California are cases in point. In California the charter of the University was reaffirmed in its entirety by the state constitution of 1879. This charter, then, cannot now be changed by legislative enactment alone. The long term of service, moreover, which it secures to appointive members of the Board of Regents, coupled with the provision that the terms of only a small proportion of the members shall expire at any one time, guards against too abrupt changes in the policy of the institution.

It seems reasonably clear that the strife and turmoil and trouble out of which issued the movement toward the establishment of our state universities, has taught one lesson which is of value to universities of every sort. And that is the lesson to which William Livingston gave utterance a century and a half ago: That no sort of higher education can possibly be a merely private concern; and that universities have the moral right to exist only in so far as they are dominated by public spirit, and devoted to the public good. The relations actually subsisting at the present time between our best state universities and the states which they severally serve, more than realize the ideal which Livingston set forth. They are institutions ministering in countless ways to the public good. They advance and ennoble the industries, build up the professions, vitalize the education, and quicken the spiritual life of the commonwealth, touching the deeper interests of the people at so many points that every class and every community feel their influence. And the people respond with loyal support and sympathy which is only partially expressed in the unanimous votes by which state legislatures have repeatedly appropriated great sums of money for university maintenance. Herein is seen one of the finest recent developments of American education. And it will be well for American life and the American character if the spirit which has been manifested in this

development shall be the dominant spirit in our educational institutions, under whatever form of management and control.

The spirit is indeed of more importance than the form, and may be trusted to mold the form to its purpose. If the two types of university control are coming nearer together, it is because both are leading up to the one type of American university, which is that of an institution ministering liberally and constantly to the higher life of the people and of all the people. The different forms of control are different means to this one end. Universities of all types are striving now-a-days to be simply universities, in this large meaning of the word. Their differences of external management become relatively of less importance as this unity of the spirit is more and more realized. The state universities have certainly done much toward the making of this American university ideal; how much proportionately, may be left to future historians to determine.

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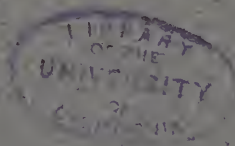
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